

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:15-cr-00084-MR-DLH**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOEL ELIAS GONZALEZ,

Defendant.

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ORDER

THIS MATTER is before the Court on the Defendant's "Motion Pursuant to Rule 60(b)" [Docs. 47, 48].¹

On February 8, 2016, the Defendant pled guilty pursuant to a written plea agreement to the charge of distributing a quantity of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). [Doc. 21]. On May 19, 2016, the Defendant was sentenced to 151 months' imprisonment. [Doc. 32]. The Defendant appealed, and on February 16, 2018, the Fourth Circuit Court of Appeals affirmed his conviction and sentence. [Doc. 46]. The Defendant

¹ Document 48 appears to be a duplicate of Document 47 in all respects except that the former document is signed "under the pain and penalty of perjury."

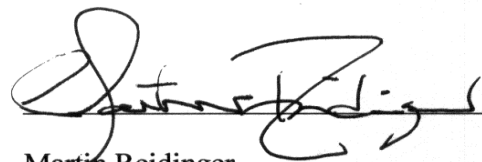
now moves to set aside his criminal judgment pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure. [Docs. 47, 48].

A defendant may not use the Federal Rules of Civil Procedure to challenge his criminal judgment. United States v. Grapes, No. 10-7612, 2011 WL 195672, at *1 (4th Cir. Jan. 21, 2011) (“The Federal Rules of Civil Procedure do not provide a vehicle by which [Defendant] may challenge his criminal judgment.”) (per curiam), cert. denied, 132 S.Ct. 1946 (2012); United States v. Leake, 96 F. App’x 873, 873 (4th Cir. 2004) (“[Defendant] cannot challenge an order in his criminal case using the Federal Rules of Civil Procedure....”) (per curiam). Further, Rule 60(b) cannot be used as a substitute for a motion seeking collateral review of a criminal judgment. See United States v. Winestock, 340 F.3d 200, 207 (4th Cir. 2003). Accordingly, the Defendant’s motion must be denied.

IT IS, THEREFORE, ORDERED that the Defendant’s “Motion Pursuant to Rule 60(b)” [Docs. 47, 48] is **DENIED**.

IT IS SO ORDERED.

Signed: March 6, 2018


Martin Reidinger
United States District Judge

